

Off. of Postsecondary Educ., Education

§ 682.215

(i) Disclose to prospective borrowers, as part of the list, the method and criteria used by the school in selecting any lender that it recommends or suggests;

(ii) Provide comparative information to prospective borrowers about interest rates and other benefits offered by the lenders;

(iii) Include a prominent statement in any information related to its list of lenders, advising prospective borrowers that they are not required to use one of the school's recommended or suggested lenders;

(iv) For first-time borrowers, not assign, through award packaging or other methods, a borrower's loan to a particular lender;

(v) Not cause unnecessary certification delays for borrowers who use a lender that has not been recommended or suggested by the school; and

(vi) Update any list of recommended or suggested lenders and any information accompanying such a list no less often than annually.

(3) For the purposes of paragraph (h) of this section, a lender is affiliated with another lender if—

(i) The lenders are under the ownership or control of the same entity or individuals;

(ii) The lenders are wholly or partly owned subsidiaries of the same parent company; or

(iii) The directors, trustees, or general partners (or individuals exercising similar functions) of one of the lenders constitute a majority of the persons holding similar positions with the other lender.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1097)

(Approved by the Office of Management and Budget under control number 1845-0020)

[57 FR 60323, Dec. 18, 1992, as amended at 72 FR 62002, Nov. 1, 2007]

§ 682.213 Prohibition against the use of the Rule of 78s.

For purposes of the calculations required by this part, a lender may not use the Rule of 78s to calculate the outstanding principal balance of a loan, except for a loan made to a borrower who entered repayment before June 26, 1987 and who was informed in the promissory note that interest on the loan

would be calculated using the Rule of 78s. For those loans, the Rule of 78s must be used for the life of the loan.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082)

[57 FR 60323, Dec. 18, 1992, as amended at 68 FR 75429, Dec. 31, 2003]

§ 682.214 Compliance with equal credit opportunity requirements.

In making a Stafford loan on which interest benefits are to be paid, a lender shall comply with the equal credit opportunity requirements of Regulation B (12 CFR part 202). With regard to Regulation B, the Secretary considers the Stafford loan program to be a credit-assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, under 12 CFR 202.8(d), the lender may request a loan applicant to disclose his or her marital status, income from alimony, child support, and separate maintenance income, and spouse's financial resources.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1071-1087-2)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9119, Feb. 19, 1993; 64 FR 58965, Nov. 1, 1999]

§ 682.215 Income-based repayment plan.

(a) *Definitions.* As used in this section—

(1) *Adjusted gross income* (AGI) means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. For a married borrower filing separately, AGI includes only the borrower's income.

(2) *Eligible loan* means any outstanding loan made to a borrower under the FFEL and Direct Loan programs except for a defaulted loan, a FFEL or Direct PLUS Loan made to a parent borrower, or a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.

(3) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

- (i) Live with the borrower; and
- (ii) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(4) *Partial financial hardship* means a circumstance in which the annual amount due on all of a borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size.

(5) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(b) *Repayment plan.* (1) A borrower may elect the income-based repayment plan only if the borrower has a partial financial hardship. Except as provided under paragraph (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) of this section, the borrower's aggregate monthly loan payments are limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty line income applicable to the borrower's family size, divided by 12. The loan holder adjusts the calculated monthly payment if—

- (i) The total amount of the borrower's eligible loans includes loans

not held by the loan holder, in which case the loan holder determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total outstanding principal amount of eligible loans that are held by the loan holder;

- (ii) The calculated amount under paragraph (b)(1) or (b)(1)(i) of this section is less than \$5.00, in which case the borrower's monthly payment is \$0.00; or

- (iii) The calculated amount under paragraph (b)(1) or (b)(1)(i) of this section is equal to or greater than \$5.00 but less than \$10.00, in which case the borrower's monthly payment is \$10.00.

(2) A borrower with eligible loans held by two or more loan holders must request income-based repayment from each loan holder if the borrower wants to repay all of his or her eligible loans under an income-based repayment plan. Each loan holder must apply the payment calculation rules in paragraphs (b)(1)(ii) and (iii) of this section to loans they hold.

(3) If a borrower elects an income-based repayment plan, the loan holder must, unless the borrower requests otherwise, require that all eligible loans owed by the borrower to that holder be repaid under the income-based repayment plan.

(4) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's subsidized Stafford Loans or the subsidized portion of the borrower's Federal Consolidation loan, the Secretary pays to the holder the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on each loan repaid under the income-based repayment plan. On a Consolidation Loan that repays loans on which the Secretary has paid accrued interest under this section, the three-year period includes the period for which the Secretary paid accrued interest on the underlying loans. The three-year period does not include any period during which the borrower receives an economic hardship deferment.

- (5) Except as provided in paragraph (b)(4) of this section, accrued interest is capitalized at the time the borrower

chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(6) If the borrower's monthly payment amount is not sufficient to pay any principal due, the payment of that principal is postponed until the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(7) The special allowance payment to a lender during the period in which the borrower has a partial financial hardship under an income-based repayment plan is calculated on the principal balance of the loan and any accrued interest unpaid by the borrower.

(8) The repayment period for a borrower under an income-based repayment plan may be greater than 10 years.

(c) *Payment application and prepayment.* (1) The loan holder shall apply any payment made under an income-based repayment plan in the following order:

- (i) Accrued interest.
- (ii) Collection costs.
- (iii) Late charges.
- (iv) Loan principal.

(2) The borrower may prepay the whole or any part of a loan at any time without penalty.

(3) If the prepayment amount equals or exceeds a monthly payment amount of \$10.00 or more under the repayment schedule established for the loan, the loan holder shall apply the prepayment consistent with the requirements of § 682.209(b)(2)(ii).

(4) If the prepayment amount exceeds the monthly payment amount of \$0.00 under the repayment schedule established for the loan, the loan holder shall apply the prepayment consistent with the requirements of paragraph (c)(1) of this section.

(d) *Changes in the payment amount.* (1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan but the loan holder must recalculate the borrower's monthly payment. The loan holder also recalculates the monthly payment for a borrower who chooses to stop making income-based payments. In either case, as a result of the recalculation—

(i) The maximum monthly amount that the loan holder may require the borrower to repay is the amount the borrower would have paid under the FFEL standard repayment plan based on a 10-year repayment period on the borrower's eligible loans that were outstanding at the time the borrower began repayment on the loans with that holder under the income-based repayment plan; and

(ii) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

(2) If a borrower no longer wishes to pay under the income-based repayment plan, the borrower must pay under the FFEL standard repayment plan and the loan holder recalculates the borrower's monthly payment based on—

(i) The time remaining under the maximum ten-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(ii) For a Consolidation Loan, the applicable repayment period remaining specified in § 682.209(h)(2) for the total amount of that loan and the balance of other student loans that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(e) *Eligibility documentation and verification.* (1) The loan holder determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower elects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the loan holder requires the borrower to—

(i)(A) Provide written consent to the disclosure of AGI and other tax return information by the Internal Revenue Service to the loan holder. The borrower provides consent by signing a consent form and returning it to the loan holder;

(B) If the borrower's AGI is not available, or the loan holder believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the loan holder may use other documentation provided by the borrower to verify income; and

(ii) Annually certify the borrower's family size. If the borrower fails to certify family size, the loan holder must assume a family size of one for that year.

(2) The loan holder designates the repayment option described in paragraph (d)(1) of this section for any borrower who selects the income-based repayment plan but—

(i) Fails to renew the required written consent for income verification; or

(ii) Withdraws consent and does not select another repayment plan.

(f) *Loan forgiveness.* (1) To qualify for loan forgiveness after 25 years, the borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during that period—

(i) Made reduced monthly payments under a partial financial hardship as provided under paragraph (b)(1) of this section. Monthly payments of \$0.00 qualify as reduced monthly payments as provided in paragraph (b)(1)(ii) of this section;

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-based payments as provided in paragraph (d)(1) of this section;

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the FFEL standard repayment plan described in § 682.209(a)(6)(vi) with a 10-year repayment period;

(iv) Made monthly payments under the FFEL standard repayment plan described in § 682.209(a)(6)(vi) based on a 10-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan; or

(v) Received an economic hardship deferment on eligible FFEL loans.

(2) As provided under paragraph (f)(4) of this section, the Secretary repays any outstanding balance of principal and accrued interest on FFEL loans for which the borrower qualifies for forgiveness if the guaranty agency determines that—

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1) of this section, including a

monthly amount of \$0.00 as provided in paragraph (b)(1)(ii) of this section; and

(ii)(A) The borrower made those monthly payments each year for a 25-year period; or

(B) Through a combination of monthly payments and economic hardship deferments, the borrower made the equivalent of 25 years of payments.

(3) For a borrower who qualifies for the income-based repayment plan, the beginning date for the 25-year period is—

(i) For a borrower who has a FFEL Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for income-based repayment. The beginning date is the date the borrower made the payment or received the deferment, but no earlier than July 1, 2009;

(ii) For a borrower who has one or more other eligible FFEL loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan, but no earlier than July 1, 2009;

(iii) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (ii) of this section, the date the borrower made a payment under the income-based repayment plan on the loan; or

(iv) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the FFEL Consolidation Loan that met the conditions in (f)(1) after qualifying for the income-based repayment plan.

(4) If a borrower satisfies the loan forgiveness requirements, the Secretary repays the outstanding balance and accrued interest on the FFEL Consolidation Loan described in paragraph (f)(3)(i), (iii), or (iv) of this section or other eligible FFEL loans described in paragraph (f)(3)(ii) or (iv) of this section.

(5) A borrower repaying a defaulted loan is not considered to be repaying under a qualifying repayment plan for the purpose of loan forgiveness, and any payments made on a defaulted loan

are not counted toward the 25-year forgiveness period.

(g) *Loan forgiveness processing and payment.* (1) No later than 60 days after the loan holder determines that a borrower qualifies for loan forgiveness under paragraph (f) of this section, the loan holder must request payment from the guaranty agency.

(2) If the loan holder requests payment from the guaranty agency later than the period specified in paragraph (g)(1) of this section, interest that accrues on the discharged amount after the expiration of the 60-day filing period is ineligible for reimbursement by the Secretary, and the holder must repay all interest and special allowance received on the discharged amount for periods after the expiration of the 60-day filing period. The holder cannot collect from the borrower any interest that is not paid by the Secretary under this paragraph.

(3)(i) Within 45 days of receiving the holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan forgiveness under this section and must notify the holder of its determination.

(ii) If the guaranty agency approves the loan forgiveness, it must, within the same 45-day period required under paragraph (g)(3)(i) of this section, pay the holder the amount of the forgiveness.

(4) After being notified by the guaranty agency of its determination of the eligibility of the borrower for loan forgiveness, the holder must, within 30 days, inform the borrower of the determination and, if appropriate, that the borrower's repayment obligation on the loans for which income-based forgiveness was requested is satisfied. The lender must also provide the borrower with information on the required handling of the forgiveness amount.

(5)(i) The holder must apply the proceeds of the income-based repayment loan forgiveness amount to satisfy the outstanding balance on those loans for which income-based forgiveness was requested; or

(ii) If the forgiveness amount exceeds the outstanding balance on the eligible loans subject to forgiveness, the loan

holder must refund the excess amount to the guaranty agency.

(6) If the guaranty agency does not pay the forgiveness claim, the lender will continue the borrower in repayment on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date the borrower's repayment obligation was suspended until a new payment due date is established. Unless the denial of the forgiveness claim was due to an error by the lender, the lender may capitalize any interest accrued and not paid during this period, in accordance with § 682.202(b).

(7) The loan holder must promptly return to the sender any payment received on a loan after the guaranty agency pays the loan holder the amount of loan forgiveness.

(Authority: 20 U.S.C. 1098e)

[73 FR 63249, Oct. 23, 2008]

§ 682.216 Teacher loan forgiveness program.

(a) *General.* The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph on the borrower's subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998. The borrower must have been employed as a full-time teacher for five consecutive complete academic years, at least one of which was after the 1997-1998 academic year, in certain eligible elementary or secondary schools that serve low-income families. All borrowers eligible for teacher loan forgiveness may receive loan forgiveness of up to a combined total of \$5,000 on the borrower's eligible FFEL and Direct Loan Program loans. If the borrower taught for five consecutive years as a highly qualified mathematics or